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No. _____

IN THE

Supreme Court of the United States

OCTOBER TERM, 1984

W. W. Mims

Petitioner

vs.

INTERNAL REVENUE SERVICE
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

W. W. Mims

Pro se

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QUESTION PRESENTED

!. Does the decision below agree that appellant's cause has succeeded except and only that "plaintiff has failed to exempt his cause from the prohibition of 7421(a) by establishing under the most liberal view of the law and the facts, that the internal Revenue Service has no chance of success on the merits."

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1. The Decision Below Agrees That Appellant's Cause Has Succeeded Except And Only That Appellant Has Failed To Exempt His Cause From The Prohibition Of 7421(a) By Establishing Under The Most Liberal View Of The Law And The Facts, That The Internal Revenue Service Has No Chance Of Success On The Merits..... A1

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PRAYER

Petitioner W. W. Mims respectfully prays that a writ of certiorari issue to review the judgment of the United States Court of Appeals for the Fourth Circuit entered in proceedings on September 25, 1984.

OPINION

The judgment of the Court of Appeals appears in the Appendix hereto, and the judgment rendered by the District Court of South Carolina also appears in the Appendix.

JURISDICTION

The judgment of the Court of Appeals for the Fourth Circuit was entered on September 25, 1984. This petition for certiorari was filed within ninety (90) days of that date.

STATUTORY PROVISIONS INVOLVED

Defendant Internal Service Memorandum In Support Of Motion To Dismiss:

> The leading cases interpreting Section 7421(a) are Bob Jones University v. Simon, 416 U. S. 725 (1974) and Enochs v. Williams Packing Co., 370 U. S. 1 (1962). In Enochs, an employer sought to enjoin the collection of FICA and FUTA taxes which it alleged it did not owe and the collection of which it said would destroy its business. The Supreme Court held unanimously that the suit was barred by the Act. The Court ruled that the effect of Section 7421(a) could be avoided only if both of two conditions were met: (1) if "in no circumstances could the government ultimately prevail" and (2) if there exists an independent basis for equitable jurisdiction (irreparable harm and inadequate legal remedy). 370 U.S. at 7.
>
> Only if it is then apparent that, under the most liberal view of the law and the facts, the United States cannot establish its claim, may the suit for an injunction be maintained. (Emphasis added).

STATEMENT OF THE CASE

Appellant led a class action into District Court for a hearing on three-year-old water system plans that had been prepared in secret for conversion of benefits of $5 million in federal funds from legal purposes for which the funds were allotted. His newspaper was subjected to an advertising boycott to force him to withdraw the case the class had agreed to appeal.

The class action was appealed from the Fourth Circuit to the Supreme Court. Certiorari was not granted (December 1972). Boycott became effective early 1972 against all efforts to prevent it.

With no income and having lost his staff he filed a civil action and won an unsubstantial award verdict five years later. Through the years of litigation he and his newspaper continued legally to assist other plaintiffs in four other

cases also obstructed.

IRS after audit rendered to the taxpayer and his spouse an assessment in 1983 on specifically the court award paid and reported on 1978 return.

Even with the award, appellant's newspaper and taxpayer sustained a net loss of several hundred thousand dollars as a result of the boycott. He has continued to issue his newspaper without a staff attempting to recover, with further heavy losses.

Appellant is deep in debt from boycott losses, and if IRS executes the assessment pending a decision in this case, filing of a judgment by IRS will be unavoidable and an alienation and dispossession by creditors will leave no means for the newspaper to ever recover. Injury will be irrevocable ---an injury illegally inflicted and by governmental participation and failures.

REASONS FOR GRANTING THE WRIT

Extraordinary And Exceptional Circumstances That Have A Profound Significance With Respect To The National Interest Revealed In The Record Of This Case That Will Show IRS Cannot Prevail

FACTS

The class Action For A Hearing

On Sept. 1, 1971 appellant, editor-publisher of The Edgefield Advertiser, a newspaper printed weekly in Edgefield, S. C. since 1836, led a class of citizens resident in Edgefield County, S. C., into District Court in Civil Action 71-882 on petition of the class with 297 signatures for a hearing, Columbia, S. C. law firm Kohn & Finkel counsel, Edgefield County Water & Sewer Authority defendant.

An allotment of over $5 million had been approved for Edgefield County named under the Economic Development Act of 1965 as a

"Re-development Area" "Economically depressed," "under developed," "under employed," and suffering from "out-migration," for construction of an "Edgefield County Water System .. to serve all of Edgefield County" as its "service area."

When the planning was in progress about three years earlier, he and his newspaper staff began to inquire in Washington and locally for information of public interest, and at the time of the hearing had not been successful and had been refused a copy of the final plans on which the contract was being advertised for bids.

There had never been a public meeting or any kind of meeting for which a public notice was published, and no progress report. A questionable purpose of the covert planning was apparent. Where would the main trunkline be located? Evidence of

fraud in the secrecy emerged in the Sept. 1 hearing. Presiding Judge Hemphill ordered the Edgefield County Water and Sewer Authority to provide copies of the comprehensive plans for public knowledge. He ordered the Corps of Engineers to conduct a formal public hearing: The Corps Chief of the Permit Section Osborne informed the Court at the hearing that the water authority was late applying for the Corps' prior authority by permit to build an intake structure in the Savannah River, and processing consequently had been late (He told the Court standard practice was to submit applications early). Judge Hemphill ordered the corps hearing held at Edgefield.

The Court hearing disclosed that the water plan projected the intake structure and trunkline to a point down the river to serve the neighboring and populous Aiken County and its surburban development area.

The two principal towns, Edgefield, the County Seat, and Johnston, in the latitude of the Clarks Hill (Savannah River) basin, that had been constructed for municipal water uses as one purpose, and had voted the year before to sell their water systems to the Edgefield County Water and Sewer Authority and would have their indebtednesses paid off, would be served by relatively small branch lines of inadequate size to serve the county. Two-thirds to three-fourths of the county would be left permanently outside of the service area. Judge Hemphill ordered a trial for Nov. 11, 1971, resulting in his decision for defendant.

Annual extra pumping cost, misrepresented at the trial to be $25,000.00 was to be about $100,000.00*

Extensive rural communities seeking to

*Published statement, later water authority chairman.

hold their populations and maintain their institutions, represented by the petitioners, believed their civil rights were being violated. They announced through The Edgefield Advertiser that they would appeal.

The Boycott Left Newspaper Without Income

On Dec. 22, 1971 a meeting** was held at Edgefield at which a "boycott" was called for. The expressed purpose was intimidation: by forcing the newspaper's advertisers to stop advertising the group of boycotters intended to pressure the leader of the class to get the action stopped. They took at least 90% of the advertising from The Advertiser and formed a new newspaper in the market area where The Advertiser had long had a natural monopoly. It continued its weekly issuance without a staff, published by the editor in four pages, without income.

**Meeting taped, transcribed: Court evidence.

Class Action Goes To Supreme Court

The editor supported the appeal, which lost at the Fourth Circuit Appeals Court, and appealed to the Supreme Court certiorari was not granted (December 1972).

C. A. 72-627 Filed Against Boycott Group

In May, 1972, in consultation with the FBI office (Greenwood,S.C.) and the Justice Department in Washington, he filed the boycott case under the Sherman and Clayton Acts with Arnold & Porter Washington Law Firm and Kohn & Finkle Columbia Law Firm counsel. The case was dismissed by District Court Judge Blatt, but was remanded for trial by unanimous decision of the Fourth Circuit Appeals Court.

Motion To Recuse-- Hearing Discloses More Obstructions To Correcting Water Plans

Plaintiff's attorneys filed Motion To

Recuse. Hearing was held by Judge Blatt Aug. 21, 1975. Transcript of hearing:

> THE COURT:..On April 13, 1973 a civil action was instituted entitled "Lonnie Gordon, et al. against the Edgefield County Water and Sewage Authority" and was dismissed on petition of plaintiff's counsel .. three days thereafter .. And shortly thereafter on or about May 17 counsel .. approached .. this Court, that it turned out they didn't have clients..That representations had been made to them that they thought they could rely on and found out later they couldn't .. But as each one of these actions was brought, of course, that would stop any advancement of funds .. So, on May 17, 1973, this Court entered an order in view of the filings had and would cause delay .. That the court directed the clerk .. not to file any further actions against the Edgefield .. Authority .. And then, on July 11, 1973, a petition was filed .. seeking to institute another action against the Edgefield .. Authority .. taking the position .. the laying of the water lines discriminated against .. their race..

In respect to Judge Blatt, appellant in this tax case has no evidence that he knew of invidious circumstances of

intimidations, documentary evidence of which was being supplied through the FBI to the Justice Department. But on Sept. 4 and 5, 1973, the plaintiffs in that case told Judge Blatt their experiences and the hostile environment that was preventing the filing of water suits from Edgefield County. Although a number of attempts were made to get transcripts of the evidence provided by plaintiffs Sept. 4 and 5, these were never made available.

Judge Blatt did not grant the motion.

Boycott Trial Ends, $151,500 Triple Award

On May 5, 1977 the jury verdict was for an award of $50,500. A year later, May 10, 1978, the Court entered final judgment tripling the figure, but did not reimburse $57,000 certified by plaintiff's counsel that they were paid as attorneys' fees and costs. Judge Blatt and senior defense counsel stated the

case was the longest they had ever been involved in.

IRS Audit Began May 1981

On May 20, 1981 IRS gave notice to taxpayer and his spouse that an audit of their 1978 and 1979 income tax returns would begin at Edgefield June 9, 1981. On Jan. 1, 1982 taxpayers under audit were asked to and did sign consent for extension of time for assessment. On June 23, 1982, taxpayers requested by letter a "hearing with the Office of Regional Director of Appeals on the grounds, disagreeing with adjustments for the year 1978," exclusively on $151,500 award.

On Feb. 2, 1983 taxpayers received a letter from IRS Atlanta: "We have closed the case.." Notice of assessment of $67,000 on $151,500 followed. All other taxes, federal and state, had been paid. Taxpayers pleading judicial concern informed IRS of intent to file complaint.

This Case Filed Aug. 29, 1983

C. A. No. 83-2161-8 was filed Aug. 29, 1983 alleging IRS acknowledged the case as presented "may not have a precedent," "and the execution of assessment would render the six years' boycott litigation a total loss to plaintiff" including "the cost of the suit" and the "unalienable right within the shelter of the Constitution -- The right to carry on a business," which was denied by the illegal boycott continuing to restrain The Edgefield Advertiser from rightful recovery even as this case is filed for a remedy, the absence of which will destroy the viability of the remnant of the newspaper continuing to be published by the taxpayer without staff, and reduced to four pages.

Magistrate Grants Summary Judgment to Defendant

Defendant IRS responding filed Nov. 1,

1983 Motion To Dismiss. Plaintiff on Dec. 30, 1983 filed Memorandum In Response To Defendant's Motion To Dismiss. Plaintiff on Jan. 15, 1984 filed Plaintiff's Motion For Summary Judgment with Memorandum in support. On Feb. 21, 1984 the Report Of Magistrate was filed granting Defendant's Motion For Summary Judgment, with the conclusion,

> ...this court is precluded from granting the remedy sought by 7421(a). Therefore there is no question of law or fact remaining for this court to determine, and summary judgment is appropriate. It appears that if the plaintiff wishes to contest the tax assessment he must first pay it and then sue for a refund.
> . . . Even if the plaintiff had presented a sufficient equitable ground for disregarding the statute, he has failed to show that the government has no chance of establishing its claim.

On Feb. 24, 1984 plaintiff filed his Motion For Supplemental Complaint for "joining the Justice Department as a party defendant for an alternate remedy,"

alleging that the Justice Department "did fail, neglect and totally abandoned its duties .. to 'faithfully execute the laws,'" and that "the Justice Department representing .. Defendant .. gravely defaulted in its failure to consider .. evaluate and give articulate assessment of the competency, the adequacy, the extraordinary, exceptional .. facts revealed in Plaintiff's Memorandum .." On Mar. 5, 1984 plaintiff filed Exceptions To Report Of Magistrate.

On Mar. 22, 1984 an Order was filed by Judge Blatt stating:

> After a careful review of the record herein, this court finds the magistrate's report to be an accurate summary of the legal principles applicable in this case .. defendant's motion for summary judgment is granted .. plaintiff filed a motion to amend his complaint by adding the United States Depertment of Justice as a defendant. Even as amended, this court lacks jurisdiction over plaintiff's action.

On Mar. 26, 1984 plaintiff filed a Motion To Present His Case Before His Honor The District Judge To Amend The Findings, with Memorandum attached. On Apr. 24 an Order was filed by Judge Blatt denying Motion For Amendment Of Judgment.

Notice Of Appeal To Fourth Circuit

On May 3, plaintiff filed in the District Court Notice Of Appeal To The Fourth Circuit Court Of Appeals. On May 11, plaintiff filed in the District Court Request For Transmittal Of The District Court's Record For Appeal, and paid fee. On May 15, District Court acknowledged receipt of record and fee and attached copy of itemization (Identification -- Case W. W. Mims vs. IRS [Cause: Its' Assessment /RE: Award in C/A 72-627]). On May 22, Appeals Court sent Informal Brief form, which appellant completed and returned. On June 21 the Tax Division,

Justice Department filed opposing Informal Brief and its Memorandum Brief For The Appellee In Support Of Affirmance Of The Judgment Of The United States District Court. Appellant found Appellee's Brief misleading, and on June 25 appellant mailed a letter to the Clerk, Fourth Circuit Appeals Court respectfully requesting permission to file a Supplemental Informal Brief..:

> on the grounds that I find the appellee's informal brief and memorandum attempts to mislead the Court both by misstating the facts that go to the heart of this case, and by .. responding to my original complaint and not to the substance of my case in its exceptional and even unique circumstances as presented in my original documents, specifically affidavits and memorandums, and plea for alternate remedy to which I am entitled by right under the law.
>
> And on grounds that appellee's informal brief and memorandum is in substance simple denial, and again in default in failures to evaluate and give articulate assessment of taxpayer's case (of) terminal jeopardy..

> Taxpayer takes note of these misrepresentations and defaults with grave concern that no opportunity may be granted for corrections, and effective pleadings for the record on which this case will be decided; and "irrevocable injury" and "certainty of success on the merits" may not be made manifest to the Court.

On July 2, the Appeals Court Secretary mailed an acknowledgment of appellant's letter to the Court Clerk stating: "Your case No. 84-1516 .. will receive the proper attention." On Sept. 25, the Appeals Court issued Notice Of Judgment:

> PER CURIUM
>
> A review of the record of the district court's opinion accepting the recommendation of the magistrate discloses that this appeal from its order refusing to give injunctive relief is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. *Mims v. IRS C/A No. 83-2161 (D.S.C April 25, 1984).
>
> * While we are prohibited by

> statute from enjoining a tax assessment, the taxpayer does have a remedy for testing the validity of any assessment by paying the tax (under protest) and suing in district court to recover the payment made.

Appellant informed the Clerk of the Appeals Court that "A Petition for Rehearing will not be filed, the 'Purpose Section' 1..2.., and 3. not appearing to permit further hearing in this case..." and "A Petition is this day being forwarded to the Supreme Court, Washington, D. C., for certiorari -- preliminary notice. Copies of this preliminary notice were mailed Sept. 28 to Clerk, Fourth Circuit Court of Appeals; and to Mark Muedeking, Esq., Tax Division, Dept. of Justice, Washington, and to Lincoln C. Jenkins, Attorney, P. O. Box 12107, Columbia, S. C. 29211.

Sequence Of The Edgefield Advertiser Activities That Led To The Advertising Boycott

An abbreviation, and sampling of actions that led to the boycott-(effort of The Edgefield Advertiser and its editor to correct a misplanned water system).

--May 31, 1967 issue The Advertiser(front page): Edgefield County Declared "A Re-development Area" under the Public Works and Economic Act, Section 401, Public Law 89-16.

--Nov. 1, 1967 (same):"Edgefield County Planning Boward .. granted $7,800 .. the fund was provided through the Farmers Home Administration for comprehensive planning. The Edgefield County study will be completed not later than July, 1968 .. All the areas within the boundaries of Edgefield County will be covered by the plan .. These grants to the rural areas

are a wise investment, announced Mr. Rogers. 'This is the kind of basic analysis that rural communities need to develop their resources constructively with permanent results,'"

--Feb. 5, 1969 (same): "A comprehensive plan for water and sewer development for Edgefield County recently completed for the Edgefield County Planning Board revealed .. the sources of water are limited .. and projected sewer and water needs for the next five to twenty years .. Further rural areas which at present have only private wells cannot expect to be served by either of the three towns .. 'It is recommended that detailed studies be initiated immediately for the purpose of determining the feasibility of a county-wide system using the Savannah River as a source.'"

--April 23, 1969 (same) "The Public Works Committee of Housing and Urban

Development has advanced a loan of $18,000 to Edgefield County to finance the planning of a water facility in the towns of Edgefield, Johnston and Trenton .. The project will cost $4,010,000 and will provide adequate water to meet present and future needs. Construction of the project will get under way in 1970.

Jan. 22, 1970 (same): Letter from editor of The Advertiser to Governor John West, Columbia, S. C. calling on the Governor to look into the conduct of officials involved in the water system secrecy. The letter stated, "I was much interested in the announcement that you will provide a hearing to all South Carolina citizens who have a reasonable complaint .. Here in Edgefield County is a depressing and scandalous violation of every principle of Democratic government. It has come about over a period of years. I have been told conflicting things by

the engineers.." (No action was taken for a hearing).

--April 8, 1970 (same): "Edgefield, Johnston and Trenton will have a question posed to the qualified voters .. on May 14 when in a Special Election they will vote whether or not to sell their water and sewer systems to the Edgefield County Water and Sewer Authority." (Special Election notices appeared in the same issue)

--May 6, 1970:Editor began a "strenuous" effort .. that the 'vote should be held up' until the plans were released.

--May 20 issue: Announcement that the voters had approved the sale in the three town referendums (Note that the three towns were to get all of their long-standing indebtednesses on their water and sewer systems paid off).

--May 25, 1970: Letter from the editor to

Senator Strom Thurmond: "Your first letter was profoundly appreciated .. Your second letter just received inspires me to ask you to join me in a dream for Edgefield County that can now be fulfilled, after generations of economic debilitation, poverty, abandonment.." It again appealed for a hearing.

--May 27, 1970 editorial: "..A major and even tragic oversight of the past twenty years has been the almost total lack of awareness of the vast opportunities of the Savannah River .. Schools and churches have been lost."..(Editorials making pleas for the "promised Edgefield County Water System" were frequent).

--May 30, 1970: Letter to Senator Thurmond: "This is to request further study of proposed plans before the federal funds are released .. This a further request that an official agency with knowledge of the vast development of

the Savannah River see how .. the plan fits into studies of the river and its possible benefits to contiguous counties.." (Reference was to Corps of Engineers).

--June 3: Editor writes to Senator Thurmond urging that the Rural Electric Administration should be brought into the planning, and suggested that Southern Engineering of Georgia, which represents REA in engineering matters, should be consulted .. "The REA is assuredly popular in this area, and I am sure its participation would be welcomed.."

--June 5: Editor received a copy of a letter Southern Engineering of Georgia, Atlanta, had sent to Davis & Floyd (the engineering firm with the contract for plans) asking permission to make a review of the preliminary report of this (water) project, according to request made by the editor of The Advertiser who was

consulting with this a major engineering firm in the Southeast.

--June 8: Editor signed a contract with Southern Engineering of Georgia to do "apreliminary study of the work which has been done by Davis & Floyd, as well as looking into other engineering approaches to the project." Davis & Floyd refused to release plans) --June 19: Letter from Senator Thurmond to editor: "I am writing to thank you for carrying my weekly column in THE EDGEFIELD ADVERTISER for the past two weeks .. Nancy and I enjoyed visiting with you when in Edgefield for the Tricentannial..I have contacted the REA."

--June 23: Letter from David A. Hamil, Administrator REA, to Senator Thurmond saying: "It may be that the cooperative could furnish guidance and assistance..." (Nothing more forthcoming from REA).

--June 24 issue The Advertiser: Letter to Senator Thurmond published citing, "Gross

Misplanning, Restudy .. Urged in Letter.".. and "you indicate a possible restudy of sources and routing of water .. However I have noted that you have already permitted EDA funds to be approved for a water system as yet unidentified, but what is known of the present engineering plan is very unsatisfactory.."

--July 15 issue: "Editor's Note: The above news release was received at The Advertiser office as a result of direct contact with the news source in Washington. So far as is known this is the first time that this report has been published. The preliminary plan to serve 'adjacent areas of Aiken County' and to serve 'one quarter of Edgefield and the northeast corner of Aiken,' is now revealed to the people of Edgefield County.."

--Sept. 23 issue reported the meeting at

Edgefield County Courthouse (Prior notice of the meeting was given to the editor and he was instructed to bring no one, that it was an executive meeting).."last Thursday, Sept. 17..attended by engineers and high officials of three federal agencies." The water plan in book form was on the conference table and there was refusal in concert to make it available to the editor.

--Oct. 14, 1970 issue headlined: "Biggest Scandal in County's History. Senator Thurmond, County Planners Involved in Secret Direction of Millions Federal Agency Funds .. To Give The Primary and Long Term Benefits To A More Populous and Growth County .. A Scandal That Has Reached A Point of Callous Indifference.."

--Oct. 31 issue: Letter received by editor from Senator Thurmond: "Dear

Walton: Enclosed you will find the text of the address which I will deliver at the keel-laying of the Frigate USS South Carolina Tuesday, December 1, 1970. Your readers may find the text .. of special interest, or excerpts therefrom.."

--Jan. 25, 1971: Letter from editor to President Nixon: "I hereby invite you to come to Edgefield, S. C., visited last spring by Vice President Agnew, where you will find plans under way for spending $5,000,000 of federal funds in secrecy, and despite all of my efforts to gain the responsible interest of people in government in Washington .. I have been bypassed."

-- Feb. 17, 1971, issue The Advertiser, editorial: "The Federal government plans to 'pump' $4,000,000 in federal grants into one of the nation's plushest resort areas (in Missouri)--Congressman W. J. Scherle --attacked the project as an 'exorbitant boon-

doggle' -- Although an economically depressed county -- beneficiaries--will be resorts, conceded -- asst. director of state parks."

--Mar. 31, 1971: Letter from Audrey L. Forbes, manager Reader Service, U. S. News & World Report, Washington: "This is confirmation of your telephone conversation. We are glad to give you permission to reprint in the news or editorial columns of the Edgefield Advertiser the article: "Crowded Cities, Empty Land --- The Nixon Remedy," from the April 5 issue.

--April 7 issue headlined: "Edgefield County Taxpayers League Is Organized.."

--May 23: Editor continues writing letters to attorneys for counsel to file complaint for court hearing, supported by the newly formed Edgefield County Taxpayers League.

--June 28: Letter from Reba Timmerman, President Taxpayers League, to Senator

Thurmond asking for a hearing, a review of water plans..(He began to direct that inquiries be made to a named staff member).

--July 8: Resolutions of Taxpayers League to six officials -- Attorney General, Senator Thurmond included, calling for "a high level hearing and review of water plans.."

--July 17: Letter from editor to Senator Thurmond informing him that "Invitation for Bids" on construction of water facility ...will be published .. Once more .. I would remind you .. the failures of government.."

--Sept. 1, 1971 issue Charlotte (N. C.) Observer: "Injunction Asked To Block S. C. Water Project (Jack Bass, Observer, Columbia)---A weekly newspaper editor goes to court here today in a battle he has fought for four years to force public

hearings on plans for a $5.5 million water system for Edgefield County .. Through his newspaper Mims has charged Republican Senator Thurmond, a native of Edgefield, with being involved in a deliberate secrecy surrounding the plans for the district."

--Sept. 2: "Judge Hemphill Refuses To Issue Order On Water Project"..."Complaint filed ... charged that the authorities had never allowed the general public a hearing in the matter and claimed he was not allowed access to the comprehensive plans, even though he made numerous attempts to secure them.."

--Sept 5 issue The State (Columbia) newspaper: "The Controversy Over Water Line Reflects Rural Economy Plight." (Kent Krell) .. "The problem is one of which other rural counties in the U. S. could identify -- declining population

and a dwindling revenue base -- Mims' newspaper and Mims himself have been unrelenting over the past four years .. A special target has been U. S. Senator Thurmond .. Mims' contention .. the public was kept in the dark.."

Edgefield County Council Adds Two New Members, But Town Members Hold Monopoly --Feb. 21, 1973 issue The Advertiser (front page): "County Council Rural Membership Declare Will Keep Faith With Rural Areas For Countywide Development." (The County Council membership had been increased to five members elected in November, 1972 from rural districts created. There has been a three-member council, each a town resident, since the County Council form of government had been installed "at-large" in 1966).

--Feb. 21, 1973: At a meeting of the

Planning Board of the county, newly elected and Vice Chairman W. T. Timmerman and newly elected member R. A. Harling "handed a 'Resolution' to the Chairman of the Board with Proposals for countywide development, calling attention to the fact that the water system plan was 'impossible' in its prospects of serving the whole county .. and would never do so .. To give approval to the proposed plan would be to set in motion the deliberate destruction of Edgefield County." The Resolution took a stand for changing the water system for a Clark Hill origin, the trunkline to serve the middle latitude of the county for a countywide water system..

Five Water Suits From Edgefield County Were Filed--One, The Class Action, Denied Certiorari. Others Obstructed, Depleted

Five "water suits" reached the federal

courts from Edgefield County, 1971 to 1975, the first, the class action with the organized boycott opposition, and four others in succession that were obstructed or depleted in the district courts. The fourth water case was transferred from Judge Blatt to Judge Chapman who ordered the condition that all members of the class --numbering several thousand -- must sign the petition to maintain the case. The Blacks complied and filed the signatures in the court. The case C. A. 73-1234 was transferred to Judge Hemphill, and attorneys Jack McQuinn and Frank Cain attempting to help the plaintiffs appealed to the court for any funds that might be allotted to assist the Blacks. The case was depleted of funds.

Final case to change the water plan to yet develop a county water system

was C. A. 74-2040, with W. T. Timmerman one of the plaintiffs. It was not maintained after filed and heard before a hearing officer.

Case of T. C. McCain vs. Edgefield County Council Successful In Supreme Court

T. C. McCain, Black resident of Edgefield, County, Chairman of the County Democratic Party, began a new approach to the problems in filing C. A. 74-281 alleging "that the Edgefield County Council is malapportioned on the basis of population." The case was assisted by files of The Edgefield Advertiser. Black and White populations were near even in the county and no Black had ever been elected to County Council. The three town voting districts had always monopolized major governmental decisions, and had continued to do so even after Council had been increased to five members with two

in outlying rural districts.

The County Council was the government of the county in every respect appointing personnel and boards, and appointed the Edgefield County Water & Sewer Authority, responsible from the beginning for plans and construction of the water system No county water system developed, but a regional water system with trunkline advantageous to Aiken County where Senator Thurmond had his South Carolina residence and owned extensive lands.

Tuesday, Feb. 21, 1984: Conclusion of McClain vs. Edgefield County Council:

> United Press International: Washington -- The U. S. Supreme Court ruled Tuesday that changes in the at-large system of electing members to the Edgefield, S. C. County Council were not properly approved by federal officials.
>
> The justices unanimously agreed with black voters in the area that a switch to an at-large elective system in 1966 was not approved under the 1965 Voting Rights Act, and therefore, 1971 changes in the system were invalid.

Member County Council Convicted In Boycott Case

A town district member of Edgefield County Council elected in the 1972 General Election was convicted in the boycott case. Two other defendants tried and not convicted held government positions: one a member of the House of Representatives who had worked closely with Thurmond in Washington and Edgefield to obtain the more than $5 million for the aborted "Edgefield County Water System;" the other a federal-state-county agency head.

Plaintiff's Newspaper Used To Disorient Jury In Boycott Case

Plaintiff in the boycott case was deposed under court order to answer all questions in four full days of questioning him. He answered them. He was ordered to produce a copy of every issue of his

newspaper for ten years (four years before the boycott and six years after ---1967 to time of trial). He produced them under written protest to counsel. Copies of The Advertiser published long after the boycott had taken its income and staff were held before the jury by defense counsel who disoriented the jury's train of thought from the relevant illegal boycott acts, with assent of the Court.

Unsubstantial, Negligible Award

The unsubstantial, negligible award provided $9,500 for plaintiff's "mitigating the damages" issuing his newspaper as "extra work" without a staff five years; and $15,000 for losses "based on profit performance and estimated profits/loss:" and $25,000 as "1977 evaluation of Edgefield Advertiser masthead, good will, market position in community - normal conditions."

The Advertiser files some years before had been adjudged by The South Caroliniana Society Library, and in a published statement declared "the most valuable file of any weekly newspaper in the state."

Appellant has edited his newspaper 48 years.

The boycott case complaint had asked the Court,

> (c) That the defendants, and each of them, be permanently enjoined and restrained from each and every one of the unlawful practices alleged in Plaintiff's Complaint;
> (d) That the defendants, and each of them as may be former advertisers in Plaintiff's newspaper be ordered and directed to commence advertising on a similar basis as they were advertising prior to the acts herein complained of.
> (e) That the Plaintiff recover his costs herein incurred and reasonable attorneys' fees; and (f) That the Plaintiff have such other and further relief as to the Court may seem just and proper.

Plaintiff made every effort known to him to appeal, but appeal was impossible. However, appeals by plaintiff and others

including counsel had been sufficient from the start of the boycott to alert the Justice Department to a history of illegal acts in Edgefield County, and evidence of the boycott illegal acts was made knowledgeable to the Justice Department continuingly and after the trial.

The only known action taken by that Department was an attorney, James H. Clingham, Jr., of the Antitrust Section of the Department of Justice responded and spent about two days in South Carolina, about a day with plaintiff's Columbia counsel and a day investigating in Edgefield County, around Sept. 1, 1972, He acknowledged the civil action was a good case, and indicated his report to his superiors would be favorable. He advised that winning the civil action case would in itself restore the newspaper's position. He left the Justice Department about one month later.

The New Newspaper Found Guilty Of Monopolizing Continued To Monopolize

Two defendants found guilty of monopolizing(They had started publishing a new newspaper in Edgefield coincident with the boycott and gained the advertising taken by the boycott from The Advertiser in amount at least 90% of that carried by The Advertiser before the boycott) continued their newspaper and its illegal monopoly after the trial. Also another new newspaper was started in Edgefield three months after the trial (nine months before plaintiff received court award).

Three Newspapers In The Market Area Merge Against The Boycotted Advertiser

The newspaper at Johnston, published since 1947 and a defendant in the boycott case formed a merger with the two new newspapers in Edgefield in 1982, believed to be illegal under the antitrust laws.

Expert Witness Testimony Revealed Unsubstantial, Negligible Award

Two expert witnesses in the weekly publication field testified as to losses resulting from the boycott acts. The two figure summations they presented to the Court gave an average of $135,587.44 total damage, and reveals, with addition of $57,000 costs and fees not recovered, and deduction of $50,500 jury verdict as to award, actual loss at time of trial, $142,087.44. When the Expert Witnesses' average figure is tripled and the $57,000 added a loss of $312,262.32 is shown.

Appellant's affidavits in the record of this case are evidence of the depleted resources and irreversible damage soon to be terminal if a remedy is not found.

Plaintiff believes it to be in order and proper to inform the Court that there has been filed by him a civil action in

District Court, Greenville, S. C. against a merger of three newspapers in The Advertiser market area alleged to be in violation of the antitrust laws and state conspiracy laws.

ARGUMENT

The facts herein set forth the soundness and integrity of this appeal that arose from a proven illegal boycott conspiracy continuing in a miscarriage of justice. The conspiracy originated in an effort to obstruct and halt an appeal of a class action case from the District Court, and appealed to the Supreme Court a writ of certiorari was not granted.

Rights Of The Press

Central and prior here are rights of the press specifically named and memorialized in the Basic Law for unfettered performance, to go to the end within the laws to properly enlighten, to promote and

to guard the public interest and foster respect for the laws, expose political abuses and safeguard the freedoms guaranteed in this Constitutional Republic.

The press is thus institutionalized broadly as the guardian of the soul of liberty. The long record of The Edgefield Advertiser and the record in this case show that appellant and his newspaper have performed every service and met every duty, and fulfilled every responsibility made manifest in the First Amendment as exceeding and superior to an enterprise of business and commerce in its appropriate mission.

In all of its years there had never been any action, legal or otherwise against it, and it had never had a mortgage over it or otherwise ever incumbered.

The press if restrained in its clearly legitimate and imperative role or

inhibited in the exercise of its rights by government schemes or conspiracies with evidence of political abuse and possible fraud and violation of Civil Rights, a grievously demanding public interest problem exists with elements therein incompatible with, and priorities above, the statute being applied in this case.

IRS Should Be Enjoined From Destructive Role

The collector of taxes is not empowered to destroy or to be a party to destroying what was a taxpaying enterprise snared illegally in miscarriages of justice. IRS has no such desire. The watchdog guarding the home and the family will not be allowed to die of injuries inflicted in their defense if there may be a remedy.

The real offenders of law and public interest made known herein should not become the victors destroying the spirit of vigilance by persisting in the

pre-emption of freedom's vigilance through depletion of the remnant of its means, the watchdog left alienated and forfeit by extraordinary circumstances whereby a remedy is available surely under the compelling letter of the Constitution in its protective intent.

In reading the dictionary, which appellant and laymen generally find more understandable than tax laws, appellant notes: "Equity - Law: 'Justice applied in circumstances not covered by law.'" And believes it to be true that the Internal Revenue Service, in its proper and constructive role, would have earlier maintained this role for relief of taxpayer left without income and in a terminal position.

IRS Knew Of Award In 1977

IRS with responsible overview of its agents acknowledging in the audit, "We

read the account of the award in the newspaper," would agree that great savings would have resulted by informing taxpayer of the liability, who was told early in the litigation that antitrust award would not be taxable. (An understandable misconstruction discovered late in the period of increasing indebtedness while attempting recovery.

Editor Sustained Freedom of The Press

The facts in the record show that the newspaper's First Amendment right to unabridged freedom conceivably was in jeopardy from the boycott, But even if that right was all that was left of a profitable business that consistently exercised that right through the long years, inherently imperative was that it must be sustained. And it materialized without any evidence whatever of abuse in any particular when the editor-publisher

sustained that right by his own labors and it became again inherently a property impeccably associated and involved continuingly in causes mutual with The Advertiser's as it sought to do for others in common jeopardy. Is that property to now be destroyed again? And if this is the decision of the Court, will that decision not be in effect an abridging the freedom of the press by an Act of Congress?

Under extraordinary and exceptional circumstances there is provision for the Court's equitable jurisdiction. And because the facts in this case show that if IRS executes its assessment the harm will be irreparable, appellant respectfully submits that a decision favorable to defendant would deny appellant his Constitutional right to freedom of the press and, to carry on a business, intrinsic and exceptive in this case. Therefore the United States cannot

BEST AV

establish its claim.

Boycott Part Of Veritable Coup d'e-tat Violating Democratic Principle

The boycott signified a veritable coup d'e-tat in Edgefield County that had been preceded by many manifestations of alien encroachments -- consolidations of voting precincts and magisterial districts -- police powers -- as result of an improperly constituted County Council functioning with jerrymandered County Council Districts for spending increasing federal grants and loans.

"One man, one vote" was in helter-skelter arrangement for one man rule by power of appropriation and allotment. The Edgefield Advertiser, leader of constructive opposition to the accumulating abuses, and presenting a major obstacle to secretive practices for

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private gain, became the target of a politically empowered conspiracy.

The challenge was to Edgefield County. an historic community of upright purpose, being transformed from traditional civil values -- defense and promotion of the home community -- to parlaying for the extracurricular government bonuses politically leveraged, once eschewed and now fostered as the first imperative, and so proferred in increasing political abuses.

And they were given new impetus and empowered broadly in conspiratorial vein by Nixon Administration Executive Orders that created a new mosaic of Regional Council authorities by which the traditional pattern of Home Rule in respective voting communities is being uprooted. A conspiratorial domestic revolution of which the facts in this case are evidence is destroying the "Roots and

Strength" of this nation.

This was and is the issue in Edgefield County in truth -- a local conflict against alien destruction on a much wider scale. The public's sense of values was and is being disoriented to discard accustomed independence and personal responsibility to accept the planning of communities' long-term future contrary to their cherished values and by secretive steps without the knowledge of the people.

Absent an informed citizenry exercising their democratic power at demographically designed voting district levels, the misplanning of the water system was an irrevocable and fradulent usurpation that will serve to violate every intent of the law under which the county water project was promulgated.

It is notable that an unfavorable decision in this case would be in effect compounding wrongs and failures of government, enumerated and defined in the record of this case, and destroying a compatriot of the Constitution and even of all the laws and the Departments in their separate powers -- a decision that would be demoralizing, and with regard to the amount of tax assessed, a relative inconsequentiality, except the greater measure of public interest, and the higher principle formed in the Basic Law as the guardian of that interest.

CONCLUSION

There is no jot of evidence, as indicated in Defense Counsel's Motion to Dismiss, that this is a case of restraint on tax collection, nor has this newspaper at any time, or might ever be, charged with any form of restraint against the

collector of taxes as a matter of long record and to the contrary; or that either would ever intend any form of obstruction or delay of any kind.

This case is concerned not with any perversity whatever on the part of the taxpayer and his newspaper. None whatever has been found, and none will exist to be found.

Here is a care and a charge that not only invites the very purpose of equitable consideration, but that which with knowledge provided would be pursued faithfully for an equitable remedy.

It is respectfully pointed out that it is not the nature of this press to depart from its long career of standing alone when necessary in its independence in faith in duties met. But to fall in an example that may chill the spirit of journalism to continue to advance its especial role is less to be chosen than to

live as an example of a press which failed in one cause but is enabled to rise by the true intent of the laws and the imperative of the Constitution to which this press has been a living tribute in its institutional quality combining success as a taxpaying business in a long and even unique example of American spirit and American enterprise, and to carry on.

The petitioner prays that this Court grant a writ of certiorari to review the decision of the Fourth Circuit Court of Appeals.

W. W. Mims
Pro se
P. O. Box 628
Edgefield, S. C.
29824

CERTIFICATE OF SERVICE

IT IS HEREBY CERTIFIED that original and 40 copies of petition were filed with Clerk, United States Supreme Court within the 90-day prescribed period but returned by Mr. Edward C. Schade noting "not double-spaced," and that the retyped petition with original and 40 copies submitted were returned for double-spacing the Appendix.

AND IT IS HEREBY CERTIFIED that this original and 40 copies retyped and double-spaced have this 24th day of January, 1985 been deposited postage paid in the United States Mail addressed to Supreme Court of the United States(Clerk, Reporter of Decisions, Marshal, and Librarian) 1 First Street, N. E. Washington, D.C. 20543,
and that,
three(3) copies have been similarly mailed to, Glenn L. Archer, Jr., Assistant Attorney General Tax Division, Department of Justice, Washington, D. C. 20530,
and that,
three(3) copies have similarly been mailed to Mark Muedeking, Esq., Tax Division, Department of Justice, Washington, D. C. 20530
and that,
three(3) copies have similarly been mailed to Lincoln C. Jenkins, Attorney, P. O. Box 12107, Columbia, S. C. 29211

W. W. Mims
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29824

Appendix

IN THE

United States Court of Appeals

FOR THE FOURTH CIRCUIT

No. 84-1516

W. W. Mims

v.

Internal Revenue Service

Appeal from the United States District Court for the District of South Carolina, at Greenwood. Sol Blatt, Jr. District Judge (C/A No. 83-2161.

Submitted August 3, 1984. Decided September 25, 1984.

Before Judge RUSSELL and HALL, Circuit Judges, and HAYNSWORTH, Senior Circuit Judge.

(W. W. Mims, Appellant Pro Se., Michael L. Paup and Mark Muedeking, Tax Division, Department of Justice, and Lincoln C. Jenkins, III, Assistant United States Attorney, for the Appellee.)

PER CURIAM:

A review of the record and the district court's opinion accepting the recommendation of the magistrate discloses that this appeal from the order refusing to give injunctive relief is without merit. Because the dispositive issues recently have been decided authoritatively, we dispense with oral argument and affirm the judgment below on the reasoning of the district court. *Mims v. IRS. C/A No. 83-2161 (D.S.C., April 25, 1984.)

AFFIRMED

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*While we are prohibited by statute from enjoining a federal tax assessment, the taxpayer does have a remedy for testing the validity of any assessment by paying the tax(under protest) and suing in the district court to recover the pay ment made.

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
GREENWOOD DIVISION

W. W. Mims,
Plaintiff
-v-
Internal Revenue Service,
Defendant

Filed March 22, 1984
C. A. No. 83-2161-8

O-R-D-E-R

This matter is before the court upon the parties' cross motions for summary judgment. The pro se action was referred to the United States Magistrate for a report and recommendation in accordance with the local rule of this District concerning reference of pro se cases under 28 U.S.C. §636(b). In the matter of Pro Se Cases (D.S.C. Jan. 18, 1979) (local rule). Although the Magistrate's recommendation is of immeasurable assistance to the court, "the judge must himself review the entire record ... and satisfy himself the recommended disposition is fair and proper." Bowman v. Bordenkircher, 522 F.2d 209, 210 (4th

Cir. 1975). Moreover, under 28 U.S.C. §636,

> (a) judge of the court shall make a de novo determination of those portions of the report or specified proposed findings or recommendations to which objection is made. A judge of the court may accept, reject, or modify, in whole or in part, the findings or recommendations made by the magistrate. The judge may also receive further evidence or recommit the matter to the magistrate with instructions.

28 U.S.C. §636(b). E.g., Blasingame v. Estelle, 604 F.2d 893 (5th Cir. 1979); Orand v. United States, 602 F. 2d 207 (9th Cir. 1971); United States v. Raddatz, 592 F.2d 976 (7th Cir. 1979). Thus, while level of scrutiny involved in the district court's review of the report and recommendation of the magistrate depends on whether objections thereto have been filed, e.g., Webb v. Califano, 468 F. Supp. 825 (E.D. Cal. 1979), in either case the district judge is free,

after review, to accept, reject or modify any of the magistrate's findings or recommendations. Camby v. Davis, No. 82-6070 (4th Cir. 1983); United States ex rel. Henderson v. Brierley, 468 F.2d 1193 (3d Cir. 1972). In the present case, plaintiff has filed objections to the magistrate's report. After a careful review of the record herein, this court finds the magistrate's report to be an accurate summary of the facts in the instant case, as well as a thorough analysis of the legal principles applicable to the case, and that report is hereby incorporated by specific reference thereto.

In his complaint, plaintiff requests that this court enjoin the Internal Revenue Service from collecting a tax assessment. Defendant contends that this court lacks jurisdiction to grant the requested injunctive relief. Under 26

U.S.C. §7421(a), suits for the purpose of restraining the assessment of any tax may be maintained only as provided in sections 6212(a) and (c), 6213(a), 6672(b), 6694(c), 7426(a) and (b) (1), and 7429(b). None of these sections grant this court authority to entertain plaintiff's action. Moreover, after a thorough review of all pleadings, briefs, affidavits and other documents in this case, this court finds that plaintiff has failed to exempt his cause from the prohibition of 7421(a) by establishing under the most liberal view of the law and the facts, that the Internal Revenue Service has no chance of success on the merits. Bob Jones University v. Simon, 416 U.S. 725 (1974); Enochs v. Williams Packing & Navigation Co., 370 U. S. 1 (1062). This court, therefore, is without jurisdiction, and the complaint must be dismissed.[1]

For the foregoing reasons, as well as for those advanced by the magistrate, defendant's motion for summary judgment is granted.

AND IT IS SO ORDERED.

Charleston, South Carolina

March 21, 1984

Sol Blatt, Jr.

(A TRUE COPY)

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1 On February 24, 1984, plaintiff filed a motion to amend his complaint by adding the United States Department of Justice as a defendant. Even as amended, this court lacks jurisdiction over plaintiff's action.

(2)

No. 84-1204

Office - Supreme Court, U.S.
FILED
FEB 28 1985
ALEXANDER L. STEVAS
CLERK

In the Supreme Court of the United States

OCTOBER TERM, 1984

W. W. MIMS, PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

REX E. LEE
Solicitor General
Department of Justice
Washington, D. C. 20530
(202) 633-2217

3pp

In the Supreme Court of the United States

OCTOBER TERM, 1984

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W. W. MIMS, PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

The court of appeals in this civil income tax case affirmed the judgment of the district court on September 25, 1984 (Pet. App. A1-A2). Petitioner did not obtain an extension of time within which to file a petition for a writ of certiorari. The time for filing a petition accordingly expired on December 24, 1984, a Monday. 28 U.S.C. 2101(c). The petition was not filed until December 28, 1984. The petition, which was filed pro se, was not accompanied by a notarized statement by a member of the Bar of this Court stating that the mailing took place on a particular date within the permitted time. See this Court's Rule 28.2. The time limit provided by Section 2101(c) is jurisdictional. *Department of Banking* v. *Pink*, 317 U.S. 264 (1942). It is therefore

respectfully submitted that the petition for a writ of certiorari should be denied.

REX E. LEE
Solicitor General

FEBRUARY 1985

DOJ-1985-02

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1204

W. W. MIMS, PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE PETITIONER IN RESPONSE TO MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

W. W. Mims
Pro se
P. O. Box 628
Edgefield, S. C.
29824

In the Supreme Court of the United States

OCTOBER TERM, 1984

No. 84-1204

W. W. MIMS, PETITIONER

v.

INTERNAL REVENUE SERVICE

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT

MEMORANDUM FOR THE PETITIONER IN RESPONSE TO MEMORANDUM FOR THE RESPONDENT IN OPPOSITION

Respondent in opposition states, "Petitioner did not obtain an extension of time within which to file a petition for certiorari."

Petitioner acted within the prescribed time and his petition was mailed on December 22, 1984, First Class Mail, at the central dispatching United States Postoffice, Augusta, Ga.,

Respondent in opposition states, "The petition, which was pro se, was not

accompanied by a notarized statement by a member of the Bar of this Court stating that the mailing took place on a particular date within the permitted time."

Petitioner in preparation for filing petition did not find notarization requirement, but now incorporates in the original of this Memorandum affidavit of an attorney licensed to practice law in the courts of this state and in the Fourth Circuit Appellate Court, which affirms that he himself mailed the original and 40 copies of the petition at the central dispatching United States Postoffice in Augusta, Ga. on the afternoon of December 22, 1984.

It is respectfully submitted that the petition be not denied.

W. W. Mims
P. O. Box 628
Edgefield, S. C. 29824

AFFIDAVIT

I, Thomas A. Mims, the Affiant herein, do hereby swear and affirm:

That on the afternoon of December 22, 1984, I deposited in the United States Mail, First Class postage paid, at the central dispatching postoffice, Augusta, Georgia, the original and 40 copies of Petition for Writ of Certiorari in the case W. W. Mims vs. Internal Revenue Service fully and properly addressed to the Clerk of The Supreme Court of the United States, Washington, D. C.

Thomas A. Mims,
118 Courthouse Square
Edgefield, S. C. 29824

SWORN TO BEFORE ME THIS
5th day of March, 1985

Notary Public for South Carolina
My Commission Expires: